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In the

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1576

RONNIE H. DISHEROON,
Petitioner,

VERSUS

THE STATE OF OKLAHOMA,
Respondent.

No. F-73-305

RONNIE HAROLD DISHEROON,
Petitioner,

VERSUS

THE STATE OF OKLAHOMA,
Respondent.

No. F-73-316

BRIEF OPPOSING CERTIORARI

STATEMENT OF CASE

Petitioner, Ronnie Harold Disheroon, was charged, tried and convicted on March 15, 1973, conjointly with James A. Davis for Unlawful Delivery of Marijuana in the District Court of Bryan County, Oklahoma, Case No. CRF-72-122. Both defendants were sentenced to a term of ten

years in the State Penitentiary. The petitioner was subsequently charged, tried and convicted on June 15, 1973, in the District Court of Bryan County, Oklahoma, Case No. CRF-72-127 for Unlawful Delivery of Marijuana and sentenced to a term of ten years at the State Penitentiary at McAlester, Oklahoma, and a fine of $5,000.00.

From said judgments and sentences, petitioner perfected appeals to the Oklahoma Court of Criminal Appeals, Cases Nos. F-73-305 and F-73-316, respectively. The Oklahoma Court of Criminal Appeals affirmed petitioner's convictions.

The petitioner in his petition makes substantial reference to and relies heavily on circumtances surrounding these two cases and two others involving this petitioner. The petitioner herein and another individual, James A. Davis, were charged with the unlawful delivery of narcotics (marijuana) to undercover agents at four different locations in Durant, Oklahoma, on the following dates, to-wit: September 30, 1972, October 1, 1972, October 7, 1972, and October 11, 1972. The defendant was charged, tried and convicted for three of the sales and these convictions were affirmed by the Oklahoma Court of Criminal Appeals. The petitioner was not tried for the sale made on October 11, 1972. Only two of the three cases are being presented by the petitioner to this Court for review due to the fact that the conviction of the petitioner for the third sale (CRF-72-128) was affirmed by the Oklahoma Court of Criminal Appeals on September 17, 1973, and the 90-day rule precludes review of that case.

STATEMENT OF FACTS

In Case No. F-73-305, the State's first witness, Jack Wilkerson, was unavailable for trial. Accordingly, and over defense objections, the State introduced this witness' testimony as it was given in the preliminary hearing. In that testimony, Wilkerson testified that he was living in Hugo, Oklahoma, and was at that time the Assistant Chief of Police. He stated that he was also working as an undercover agent with Mr. Edward Loffi, and that on October 1, 1972, he and another undercover agent, Officer Thurmond, were in Pappy's Playpen at approximately 1:25 a.m. (Tr. 40).

He stated that a Mr. Davis had come into the club and made inquiries as to whether anyone wanted to buy some marijuana (Tr. 40). After Wilkerson told Davis that he wanted to buy some, Davis stated that he would have to go down to another club to where Mr. Disheroon was to get it (Tr. 40). At this point, Agent Wilkerson and co-defendant Davis got into Wilkerson's car and drove to "our club." Davis went into the club, came back outside and went over to a group of people where he and Disheroon left the group and went over to Disheroon's car.

Wilkerson stated that he observed Disheroon reach into the car and pull out two plastic bags which he handed to Davis. Davis then returned to Wilkerson's car, gave the bags to Wilkerson and Wilkerson gave Davis a twenty-dollar bill. Davis then got out of Wilkerson's car and handed the money to Disheroon who was standing in front of his (Wilkerson's) car. The witness stated that he then left the club and turned the "baggies" over to Edward Loffi with both agents initialing the baggies and placing them in an

envelope (Tr. 41). The witness further identified both defendants as being the ones he was involved with in the transaction.

Edward Loffi next testified to being employed by the Oklahoma State Bureau of Investigation as an agent and to being in Bryan County on October 1, 1972, making a drug investigation. He observed Wilkerson at Pappy's Playpen at approximately 1:25 a.m. He observed Wilkerson leaving with another individual and followed them to "Our Club" where this other person went over to a group of people. He stated that this person and another individual who was tall and thin, left the group, went over to a late-model Oldsmobile where the tall, thin person got something from the car and gave it to the one who had arrived with Wilkerson (Tr. 44).

This person then returned to Wilkerson's car, stayed approximately five minutes, then left the car, met the other tall, thin person and both left together (Tr. 45).

The witness stated that he later met Wilkerson at their prearranged meeting place where Wilkerson gave him two baggies containing a green leafy substance. Both he and Wilkerson initialed the bags which were then placed in an O.S.B.I. envelope which was dated, sealed and initialed. The witness stated that the envelope remained in his possession until he placed it in an evidence locker at the O.S.B.I. Loffi also stated that he had taken down the tag number of the Oldsmobile and it was registered to the defendant's mother, Lucille Disheroon (Tr. 49).

The next witness was Ronald Wayne Clodfelter, the state chemist. The witness stated that he had run a micro-

scopic examination and a modified Dugenois test on the substance in the two baggies (Tr. 68) and determined the substance to be marijuana (Tr. 67).

After this witness, the State rested, the defense demurred to the State's evidence and was overruled (Tr. 74).

Ronnie Disheroon first testified for the defense. He stated that he was in "our club" with his girlfriend, when James Davis came in and asked for some information about a bass player for their band. They and some other people then went outside where the witness went to his car and got an address from the glove box and gave it to Davis, who then went over to another person's car and then rejoined the witness. Both then went back into the club.

Lucille Disheroon next testified for the defense. She stated that after the preliminary hearing, Jack Wilkerson called her and subsequently came to her house. She testified that Wilkerson offered to help Ronnie Disheroon with his (Wilkerson's) testimony and then asked to borrow $500.00 because he was behind in his car payment. She stated that she made Wilkerson a loan on that occasion and a further loan of the same amount a short time later. The second time he came to see her he stated that his wife was going to have a baby and he needed the money for the hospital expenses.

On cross-examination this witness stated that she had previously been convicted of manslaughter and possibly another felony.

After this witness, the defense rested.

In Case No. F-73-316, the State's first witness, Jack Wilkerson, was unavailable for trial. Accordingly, and over defense objections, the State introduced this witness' testimony as it was given in the preliminary hearing. In that testimony, Wilkerson testified that on September 30, 1972, he was Assistant Chief of Police of the Hugo Police Department and that on the day in question, he was working as an undercover agent with Edward Loffi, an agent with the Oklahoma State Bureau of Investigation. Wilkerson stated that at approximately 4:45 p.m. on September 30, he and the female companion were at the Toot and Scoot Drive-in where they met the defendant and James Davis, who got into a brown Chevrolet and left the drive-in. The witness and his companion followed the defendant and Davis to a location on South Ninth Street. When they arrived they saw Davis hand something to some other people, at which time he, the witness, stated, "I'd like to have something like that, if he has some more" (Tr. 130). Wilkerson then stated that the defendant went into the house and came back out and handed to Wilkerson's female companion a plastic bag containing a green leafy substance. Wilkerson then gave the defendant a twenty-dollar bill (Tr. 130). The witness then stated that he gave the bags to Edward Loffi at a prearranged meeting place.

Edward Loffi next testified for the State. He stated that his occupation was that of an agent with the Oklahoma State Bureau of Investigation. On the date in question, he was surveiling his undercover agent, Jack Wilkerson, in case he (Wilkerson) should make a purchase of narcotics or dope (Tr. 135). Loffi stated that he saw Wilkerson and a

female companion drive to the Toot and Scoot, saw the female enter the drive-in and exit a few minutes later, and then saw the defendant and Davis leave the drive-in with Wilkerson following them (Tr. 137). Loffi began following Wilkerson, lost him for a few minutes and picked him up again following him to the residence in question on South Ninth Street. After positioning himself so that he could observe what was occurring, he saw Wilkerson and his female companion standing by a residence when a male subject exited therefrom, handed the female an object and Wilkerson then handed the defendant an object. Shortly thereafter, Wilkerson met Loffi at a motel room and gave him a plastic bag containing a green, leafy substance (Tr. 141). The bag was then initialed by Loffi and Wilkerson and placed in an O.S.B.I. envelope. The witness then testified that he sealed the envelope and it remained in his possession until it was placed in the evidence locker at the Oklahoma State Bureau of Investigation.

The State then read to the jury the stipulation entered into between the defendant and the District Attorney to the effect that the State's chemist, if he were called to testify, would testify that he had run tests on the material submitted to him and that the results of said tests would show the substance was cannabis sativa, otherwise known as marijuana (Tr. 160). The State then rested.

The defendant offered from the testimony of Jack Wilkerson which was given at the preliminary hearing, one question and one answer which in substance reflected that the defendant did not hand the marijuana *directly* to Wilkerson. The defendant did not take the stand nor was any other evidence offered in his behalf.

Even though the petitioner is seeking review on only two convictions, and even though he was never tried for the fourth sale, nonetheless he seeks to combine all four incidents in an attempt to show that his rights of due process and fundamental fairness were violated because the investigating officers "allowed" him to make four separate sales on four different occasions, thereby committing four separate offenses when they could have arrested him immediately after the first sale was made.

The respondent respectfully submits and will show below that such an assertion is meritless in that investigating officers are under no duty and indeed would often be endangering the effectiveness of their entire investigatory process if they were compelled to make arrests after an initial transaction.

The primary function of police officers and prosecutors in our society is to protect society from those who choose to violate its laws. The primary function of an individual in a society is to abide by the laws of that society. It is the individual who determines whether he shall abide by those laws or not, and one who has repeatedly violated one of those laws, but concedes that entrapment is not an issue, cannot later claim that had he not been given the opportunity to do so he would not have violated the law. The opportunity to violate laws and the temptation to do so have been successfully resisted by the overwhelming majority of our citizenry since the inception of society. In pursuit of their primary function, police narcotics investigators must deal with a highly developed network of illicit traffickers in narcotics and to terminate an investigation after an initial transaction without attempting to ascertain

the extent that others are involved and deducing the source of supply is akin to removing one small splinter from a limb while allowing a festering infection to run rampant through the entire body.

REASONS FOR NOT GRANTING THE WRIT

ARGUMENT AND AUTHORITIES

I.

ADMISSION OF THE PRELIMINARY TESTIMONY OF WILKERSON, THE UNDERCOVER AGENT IN THE TRIAL WAS NOT A DENIAL OF PETITIONER'S CONSTITUTIONAL RIGHT OF CONFRONTATION; AND THE ADMISSION IS NEITHER INCONSISTENT WITH NOR CONTRARY TO THE ESTABLISHED PRECEDENT OF THE COURT.

The petitioner herein, Ronnie H. Disheroon, contends that his constitutional rights of confrontation were denied to him due to the fact that a State's witness was unavailable at the time the trials were held and the witness' testimony at the preliminary hearings held prior to the trials were admitted into evidence in order to introduce the unavailable witness' testimony.

The defendant was present and represented by counsel at both preliminary hearings. At each hearing the defendant was given the opportunity to cross-examine the State's witness, Jack Wilkerson, but chose not to do so in one instance and to limit cross-examination to one question in another instance. The records of both preliminary hearings clearly and irrevocably indicate that the rights of confrontation were waived in one case and the cross-examination was limited by the defense counsel in the second case.

In the case of *In re Bishop*, Okla. Cr., 443 P.2d 768 (1968), the Oklahoma Court of Criminal Appeals held that:

> "The accused's failure to cross-examine a witness at a preliminary hearing may constitute a waiver of the right of confrontation at a subsequent trial, as being an intentional relinquishment or abandonment of a known right or privilege, if the prosecution properly shows that the witness is actually unavailable to testify at a subsequent trial, and that sufficient effort has been exercised to produce the witness to testify."

In *Rodriguez* v. *Nelson*, 286 F.Supp. 321 (1968), the United States District Court for the Central District of California held at 323:

> ". . . However, an accused may waive his right to confront and cross-examine, and the waiver may be accomplished by being expressed by the accused's counsel. *Wilson* v. *Gray*, 345 F.2d 282, 286 (9th Cir. 1965). The introduction at the trial of testimony given by a witness at a preliminary hearing is a denial of the right of confrontation only where the testimony has been taken at a hearing at which the accused is not represented by counsel who has given a complete and adequate opportunity to cross-examine. *Pointer* v. *State of Texas*, 380 U.S. at 407, 85 S.Ct. at 1070, 13 L.Ed.2d at 928 (1965); *Harrara* v. *Wilson*, 364 F.2d 798, 799 (9th Cir. 1966)."

In order to protect a defendant's constitutional rights, the State, upon seeking to introduce testimony taken at a preliminary hearing, must not only show that the witness is unavailable at the time of the trial, but also that good faith and due diligence had been exercised to locate the witness and insure his presence at the trial.

In *Fletcher* v. *State*, Okla. Cr., 364 P.2d 713, at 715, the Oklahoma Court of Criminal Appeals held that:

> ". . . A showing of due diligence must be made to lay the predicate for introduction of a transcript of the testimony of the previous preliminary hearing."

In the case of *Harris* v. *State*, Okla. Cr., 400 P.2d 64 (1965), the Oklahoma Court of Criminal Appeals held that sufficient diligence had been shown where the deputy sheriff received a subpoena, visited the address, found it vacant and ascertained from the neighbors that the witness had moved somewhere in Texas. He checked with the police department in an attempt to ascertain the witness' present address, but was unsuccessful. Again, prior to trial, the deputy sheriff returned to the last known address and was told the witness had moved to Texas.

The respondent respectfully submits that an even more extensive search was conducted in order to locate the missing witness in the two cases involved herein than that which was held sufficient in *Harris, supra.*

In Cause No. F-73-305, under sworn testimony, found on pages 14 through 16 of the trial transcript, the District Attorney, in responding to the questions asked him by the defendant's counsel, related his activities in attempting to locate the witness. The trial was held on March 15, 1973; the District Attorney testified that he had not seen the witness since December and that he had enlisted the aid of the Crime Bureau personnel in order to locate the witness; that he had personally talked with the Ardmore Sheriff's Department personnel, city police officers, and the District Attorney's personnel, that he had personally gone

to Wilson, Oklahoma, to talk with the witness' inlaws to see if he could ascertain the witness' whereabouts from them; that he also talked with the Del City Police Department officers; that he followed up leads by talking to authorities in Mississippi and Hugo, Oklahoma; that he personally went to his (the witness') former residence but could not find a forwarding address; that he had talked with the witness' inlaws and grandmother; that he had issued bulletins out on the witness since December and that he had checked leads in Oklahoma City and finally that subpoenas had been issued for the witness in both Carter County and Choctaw County.

With regard to Cause No. F-73-316, similar attempts to locate the witness were testified to by the District Attorney and can be found on pages 114 through 119 of the trial transcript.

The defendant contends that the trial court accepted a narrative statement from the prosecuting attorney on the availability of the witness. The respondent respectfully submits that the District Attorney was examined by the petitioner's counsel at the time of both trials and answered each and every question put forth to him regarding extensive, and exhaustive efforts to locate the witness.

The petitioner further contends that the respondent failed to put forth testimony to establish due diligence and good faith in attempting to locate the witness, because only the District Attorney testified. The respondent respectfully submits that a reading of the two trial transcripts, at the pages indicated above, will clearly reveal that the District Attorney in both cases personally conducted the search for

the witness, talked with other authorities directly, and traveled to various locations personally, and therefore being the most knowledgeable person regarding incidents of the search, he was also the most logical person to submit evidence to the court to prove the respondent's good faith efforts and due diligence in attempting to locate the witness.

The respondent would further respectfully show that the contention of the petitioner that the witness was a paid informer is unsubstantiated by the evidence. On page 39 of the transcript in Cause No. F-73-305, the following testimony can be found:

"Q. Would you state your name to the Court?

A. Jack Wilkerson.

Q. And where are you employed?

A. I am the Assistant Chief of the Hugo Police Department.

Q. Where were you employed, or for whom did you work—or under—work under, on or about October 1, 1972?

A. I was an undercover agent for Mr. Ed Loffi."

Hence, it can be seen that although the witness was an undercover agent, he was also employed as an Assistant Chief of Police.

The respondent would further respectfully direct the Court's attention to pages 17 through 27 of the transcript of Cause No. F-73-305 wherein the defendant's mother testified. Following her testimony at pages 28 and 29 in the transcript, can be seen photocopies of two checks, each for $500.00 made out by the defendant's mother to Jack Wil-

kerson, the missing witness. It was immediately after these checks were cashed that the witness Wilkerson mysteriously disappeared. The respondent draws no conclusions and makes no inferences from said evidence, but merely points the same out for the Court's careful consideration. Since the petitioner continually referred to the absence of Wilkerson in his petition, the respondent feels that such evidence and its possible implications should not be overlooked.

The defendant knowingly, voluntarily, and intelligently, by and through his counsel waived his right of confrontation at the first preliminary hearing and limited it to one question in the second preliminary hearing. Since a State's witness was shown to be unavailable at the time of trial, and since the respondent showed a good faith effort and due diligence in attempting to locate the witness, the respondent respectfully submits that the testimony of the unavailable witness at both preliminary hearings was properly admitted into evidence at the time of each trial, and that the Oklahoma Court of Criminal Appeals properly affirmed the trial court's discretionary decision in having admitted same into testimony.

The respondent respectfully submits that the Court of Criminal Appeals of the State of Oklahoma has ruled in compliance with the constitutional right of confrontation, and that this Honorable Court should therefore not grant this writ.

II.

PROSECUTION OF THESE CASES AS SEPARATE ACTIONS DID NOT TWICE PUT THE PETITIONER IN JEOPARDY OF LIFE OR LIMB FOR THE SAME OFFENSE NOR DID IT DEPRIVE THE DEFENDANT OF HIS RIGHT TO DUE PROCESS.

The petitioner contends that the State attempted to circumvent the intent of the State Legislature which set the punishment for the unlawful delivery of marijuana at imprisonment for not less than two years nor more than ten years and a fine of not more than $5,000.00, by filing three separate charges against the petitioner instead of one, although the petitioner sold marijuana to an undercover agent on four separate and distinct occasions.

The thread of continuity which the petitioner claims makes these four separate offenses a single transaction is his assertion that since agent Loffi was involved in each purchase that it was a "scheme" and until completed (until the last exchange of money for marijuana was made) all the sales were part of a single transaction.

In *Branch* v. *Mills*, Okla. Cr., 500 P.2d 590 (1972), the Court quoted *State* v. *McDonald*, 231 Ore. 48, 365 P.2d 494 (1961), which held:

> "The same transaction is usually to be found in a continuing crime . . . An example of a crime of this nature is to be found in the *continuous and uninterrupted* transportation of the *same identical liquor* through several counties." (Emphasis added.)

The fact that any given individual (other, of course, than the defendant) is present or not present during the

period of time covered by the criminal activities is immaterial. It is the criminal conduct which the defendant is engaged in which determines whether a single or multiple transaction occurred.

In *Long* v. *State*, Okla. Cr., 490 P.2d 759 (1971), the police officer made two buys of narcotic drugs from the defendant in less than two hours' time. The Court stated at 760:

> "We are of the opinion that the two sales were not, in fact, a continuing transaction, and as such, constitutes two distinct offenses. *We observe the differences in the time of sales*, the differences in the amounts of each sale, the differences in the number of items sold on each case, *and the obvious completeness of each sale, that is the exchange in money, and the passing possession of the drugs.*"

The Court further stated that since no testimony of the first sale was introduced during the trial of the second sale, then the same testimony would not support both charges. *Id.* at 760. In the instant case, all the sales made by the petitioner were separated by at least two days' time and were each consummated by the exchange of money and the passing of possession of the marijuana. Hence, under the criteria set forth in *Long, supra*, each sale was a separate and distinct offense and should be punished as such. It could further be seen that testimony or evidence from any of the other three sales by this petitioner was not introduced nor need it have been in each individual case. Additionally, evidence of the other sales would not support the defendant's conviction for the sale made in any one case. *Estep* v. *State*, 11 Okla. Cr. 103, 143 Pac. 64 (1940).

In the recent case of *Stockton* v. *State*, Okla. Cr., 509 P.2d 153 (1973), the Oklahoma Court of Criminal Appeals stated:

> "The true test of making double jeopardy a ban is whether the evidence necessary to support the second information will be sufficient to pronounce a legal conviction on the first." Citing *Jackson* v. *State*, 11 Okla. Cr. 523, 148 Pac. 1058.

Hence, the respondent takes the position that the separate convictions must stand since the evidence adduced that each would be insufficient to sustain the conviction had in all the others.

The sister states of Arkansas, Georgia, and Texas, have also held that each separate independent sale of a narcotic constitutes an offense which may be prosecuted separately whether the sales are to the same or different persons or whether they are made on the same or different occasions. See *St. Clair* v. *State*, 160 Ark. 170, 254 S.W. 473; *Pierce* v. *State*, 160 Tex. Cr. 649, 274 S.W.2d 405; and *Walker* v. *State*, 146 Tex. Cr. 138, 171 S.W.2d 887.

In the case of *Geter* v. *State*, 199 S.E.2d 272, the Georgia Court held:

> "Imposition of consecutive sentences on conviction of two counts of sales of heroin to an undercover agent, one sale occurring October 6, 1971, and the other October 18, 1971, did not violate due process and double jeopardy clauses on the theory that the police permitted defendant to continue to violate the law and then charged separate offenses."

Similar decisions as rendered above were also reached by the Courts in *State* v. *Patterson*, 513 P.2d 517, and *U. S.* v. *Carlton*, 475 F.2d 104, wherein the Court, quoting from the case of *In re Riadon* v. *U. S.*, 274 F.2d 304 (6th Cir.), stated:

> "It would be an unwelcome result and do great injury to the public interest if it were made possible in the application of the double jeopardy position of the Fifth Amendment for a counterfeiter to plead guilty of possession or transfer of one, or a small number of illicit securities, and thereby secure immunity from prosecution in a subsequent passing or possession of an unlimited number of counterfeited obligations of the United States. This would be what Mr. Justice Black in a different setting in *Wade* v. *Hunter*, 336 U.S. 684, 691, 69 S.Ct. 834, 838, 93 L.Ed. 974, denominated as 'the mechanical application of an abstract formula.'
>
> "The case of *United States* v. *Nickerson*, 211 F.2d 909 (7th Cir.), involved two indictments charging violations of Title 18 U.S.C.A. §659. The first indictment, in the Northern District of Illinois, charged the possession of three-hundred bottles of whiskey on November 19, 1952. The second charged the possession of twenty-three and one-half cases of whiskey in the Eastern District of Illinois on November 18, 1962. The accused claimed that the offenses charged arose out of the same act and constituted double jeopardy. The Court did not agree with the claim, and refused to vacate the conviction."

There is a recurrent theme running throughout the defendant's petition implying that the State's only purpose in not arresting the defendant and filing charges after the first sale was to secure evidence of additional sales in order

to circumvent legislative intent and file more than one charge, thereby subjecting the defendant to incarceration for a period of time in excess of that provided by the Legislature.

In *Hoffa* v. *U. S.*, 385 U.S. 293, 309, 87 S.Ct. 408, 17 L.Ed.2d 374, this Honorable Court stated:

> "There is no constitutional right to be arrested. The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment if they act too soon and a violation of the Sixth Amendment if they wait too long. Law enforcement officers are under no duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction."

Totally absent in the petitioner's petition is any discussion of the nature of police investigations in narcotic cases. As indicated in *Hoffa, supra,* an investigation is seldom halted when investigating officers have obtained only the minimum evidence to establish probable cause. The State has a legitimate interest in pursuing an investigation until it is certain that the quantum of evidence obtained will not fall short of the amount that is necessary to support a criminal conviction. Investigations are often continued after the first sale has been made in order to ascertain how far the seller will go in his illegal conduct, or to discover who his associates are and the origin of his supply. The respondent does not here contend that police officers are always successful in locating the source of supply, nonetheless the respondent does steadfastly maintain that if it were

not permitted to pursue investigations beyond the incident of the initial sale, its entire range of effectiveness in putting a halt to the illegal distribution of drugs would be severely hampered. As indicated in *U. S.* v. *Sizer*, 292 F.2d 596 (4th Cir. 1961), such considerations are legitimate factors to be considered by the officer in charge of the investigation. In *Sizer* the Court stated:

> "Also without merit is the appellant's contention that he should have been arrested immediately upon the first sale and not given the opportunity to make additional sales. The arrest was not unduly made, and it was not improper for the officers to see how far Sizer was prepared to go in his illegal conduct, and to discover, as they did, the source of his supply. See *Dailey* v. *U. S.* (5th Cir. 1968), 261 F.2d 870, cert. denied, 359 U.S. 969, 79 S.Ct. 881, 3 L.Ed.2d 836."

It is well established throughout our judicial system that investigations in narcotics cases may properly be conducted after the first sale is made in order to insure that as many of the individuals involved in illegal distributions of narcotics will be found, and brought to trial. It would be fruitless indeed to halt an investigation after one sale is made and never even attempt to find the main distributor and source of supply. By adhering to such tactics, police officers might well even encourage illegal drug traffic—for it would soon become obvious that few investigations would be thorough enough to reach the main sources of supply. As fast as police officers would remove sellers from the streets, distributors would fill the empty ranks with new recruits. The propriety of conducting thorough investigations was poignantly expounded in *U. S.* v. *Clarke*, 224 F.Supp. 647, wherein the Court stated:

"In the present case, the arrest was not unduly delayed since less than a month elapsed between the first sale and the arrest. By the continuing investigation in this case, the agents got some idea as to how far the defendants were willing to go in their illicit narcotics scheme as is witnessed by the increasing volume of business transacted at the successive meetings, as well as defendant's plan for opening the clinic to increase their supply. It was also important for the investigation to continue so that it could be determined whether or not others were involved with the defendant in this sordid business.

"In holding that the continuing investigation in this case was completely justified and proper, consideration was given the nature of the offense involved. The illicit traffic in narcotics, by its nature, is cancer-like in that it feeds on itself and infects everything it touches, spawning a multitude of other crimes. Once such a nefarious operation is suspected or discovered, it is the duty of government agents to ascertain fully the extent of the defendant's involvement, as well as to make sure that all concerned are apprehended. The necessity for a full and complete investigation was obvious and it was carried out in this case with complete propriety."

In summation, the respondent respectfully submits that petitioner committed separate and distinct offenses for which he was properly prosecuted. The decision of the State to continue the investigation beyond the first sale was a legitimate and necessary police practice and did not in any way violate the petitioner's rights of due process.

CONCLUSION

THEREFORE, premises considered, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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July, 1974

CERTIFICATE OF SERVICE

This is to certify that I mailed three copies of the above and foregoing instrument to which this certification is attached, to the following named counsel of record this ..... day of ....., 1974:

Thomas Dee Frasier
303 Pythian Building
Tulsa, Oklahoma 74103

Attorney for Petitioner

.....

MARVIN C. EMERSON